

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/03/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000487

FILED: _____

STATE OF ARIZONA

GARY L SHUPE

v.

JOHN DAVID WOLFE

GENE R STRATFORD

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #5853633

Charge: 1. DUI
2. FOLLOWING TOO CLOSE

DOB: 09/14/64

DOC: 09/15/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since the time of oral argument on March 13, 2002, and this Court has considered

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and reviewed the record of the proceedings from the Phoenix City Court, and the Memorandum submitted by the parties.

The only issue raised by Appellant concerns the trial judge's denial of Appellant's Motion for Judgment of Acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure. A judgment of acquittal is only required when there is no "substantial evidence to warrant a conviction."¹ When reviewing the sufficiency of the evidence, an appellate court must not reweigh the evidence to determine if it would reach the same conclusion as the original trier of fact.² Evidence should be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.³ If there are conflicts in the evidence, an appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.⁴ The Arizona Supreme Court has explained in State v. Tison⁵ that "substantial evidence" means:

More than a scintilla and is such proof that a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁶

¹ State v. Doss, 192 Ariz. 408, 966 P.2d 1012 (App. 1998).

² State v. Guerra, 161 Ariz. 289, 78 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980).

³ State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d (1982).

⁴ In re Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; Ryder v. Leach, 3 Ariz. 129, 77 P.490 (1889).

⁵ SUPRA.

⁶ Id. at 533, 633 P.2d at 362

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In this case substantial evidence was presented in support of the charges. It is not for this Court to second-guess a "credibility call" by the trial judge in denying a Rule 20 Motion where substantial evidence may be found in the record. This Court specifically finds substantial evidence exists and was presented to the trial judge in support of the charges for which Appellant was convicted.

IT IS THEREFORE ORDERED affirming the judgments of guilt and responsibility and sentences imposed.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all future and further proceedings.